

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5481 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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LALSHAH KALUSHAH KADRI

Versus

STATE OF GUJARAT

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Appearance:

MR YM THAKKAR for Petitioner

MR DN PATEL, APP for Respondent No. 1

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/09/1999

ORAL JUDGEMENT

Rule. Mr. D.N.Patel, learned APP appears and waives service of Rule for the respondent State. With the consent of the learned counsel appearing for the parties, matter is taken up for final hearing today.

Mr.Yogesh Thakkar, learned counsel appearing for the applicant has argued at length and has taken me through facts of the case and especially through the

order dated 7.8.1999 passed by the learned Addl. Sessions Judge, Bhavnagar in Criminal Revision Application No. 133 of 1999 confirming the order passed by the learned Chief Judicial Magistrate, Bhavnagar on 3.8.1999 in connection with Vartej Police Station CR I.No.64/99.

The grievance of the learned counsel appearing for the petitioner is that though the order passed by the learned Addl. Sessions Judge appears to be a reasoned order, but the same is, in fact, not a reasoned order because legal points which were argued before the learned Addl. Sessions Judge and ground raised in memo of revision are not dealt with. Mr. Thakkar has also pointed out the decision of this Court in the case of Ashokkumar Kirtanlal Doshi & Ors. v/s State of Gujarat (Coram: N.N.Mathur,J ) delivered on 12.03.1997 in Special Criminal Application No. 307 of 1997, holding that once the anticipatory bail has been granted, it is only in extra-ordinary and exceptional circumstances, powers granting remand should be exercised. According to Mr. Thakkar, aforesaid decision was not brought to the notice of the learned Addl. Sessions Judge as the same being un-reported decision.

After going through aforesaid decision and in view of the facts and circumstances of the case, in my opinion, matter requires to be remanded to the learned Addl. Sessions Judge to appreciate legal aspects raised by the petitioner in light of the entire facts and circumstances of the case and in light of aforesaid decision and to decide about the legality and validity of the order passed by the learned Chief Judicial Magistrate granting remand to a person who is aged about 70 years. It is not a matter of dispute that in the case on hand also, the order of anticipatory bail is passed in favour of the present petitioner and the Magistrate has granted remand as the order granting anticipatory bail was a conditional order containing condition to that effect. Learned APP fairly submits that matter can be remanded back to the learned Addl. Sessions Judge with a direction to decide and deal with the matter in light of the above-referred decision afresh. Learned counsel appearing for the applicant undertakes to produce before the learned Addl. Sessions Judge, certified copy of the above-referred decision so that he can appreciate various aspects of the matter.

In the result, this application is allowed. Impugned order dated 7.8.1999 passed by the learned Addl. Sessions Judge, Bhavnagar in Cri. Revision Application No. 133/99 is hereby quashed and set aside and matter is remanded back to the learned Addl. Sessions Judge, Bhavnagar for disposal of the aforesaid Criminal Revision

Application afresh, in accordance with law and keeping in view that observations made in this order as expeditiously as possible. It is further ordered that if the learned Addl. Sessions Judge concerned decides said application afresh and decision is, if against the applicant herein, the operation, execution and implementation of the same shall remain stayed for a period of 10 days from the date of passing of such order.

Rule is made absolute to the aforesaid extent. No costs. Direct Service is permitted.

10.9.1999 [ C.K. BUCH, J]

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